

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 631 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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SABIRSHA ISMAILSHA DIVAN - Petitioner(s)

Versus

STATE OF GUJARAT THR' SECRETARY & 1 - Respondent(s)

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Appearance :

MR BS BRAHMBHATT for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1,2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/01/2006

ORAL JUDGMENT

1.Rule. Learned AGP Shri Siraj Gori waives service of notice of rule on behalf of respondents on advance copy. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner has challenged an order dated 17-05-2005 passed by the Deputy Collector, Anand. By the impugned order, the Deputy Collector was pleased to assume the management of land bearing survey no. 2559/a+b admeasuring 0 Hector 57 Are 67 sq. mtr. Of Anand. The reason for passing such an order was that the Deputy Collector found that there was no cultivation on the land in question for two or three years continuously. He therefore, in exercise of powers under section 65 of the Bombay Tenancy and Agricultural Lands Act passed the said order.

3. In the impugned order, it was recorded that despite sufficient opportunities, the petitioner could not produce the proof to show that the land is now part of T.P. Scheme. The petitioner also could not substantiate with material, his defence that the land is surrounded by residential buildings and land meant for the purpose other than agricultural. He also could not establish that there is no irrigation available and that he had tried to cultivate the land during monsoon. The Deputy Collector therefore, found that the petitioner could not show that the land was not cultivated due to reasons beyond his control.

4.The learned advocate Shri Brahmhatt for the petitioner submitted that the petitioner could not produce necessary material at the relevant time. However, the petitioner now possess full materials to establish his defence, and given an opportunity, the petitioner would produce the same before the authorities.

5.In view of the fact that the Deputy Collector passed an order assuming the management of the land in question for a period of 10 years which would adversely affect the petitioner, in facts of the present case, I find that the petitioner deserves one more opportunity to produce necessary material before the authorities. For the above purpose, impugned order dated 17-05-2005 is quashed. The proceedings are remanded back to the authorities for fresh consideration and disposal in accordance with law after giving an opportunity to the petitioner to produce additional evidence. With these directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs. Direct service is permitted.

(Akil Kureshi, J.)

(raghu)